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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ben Daranda,

10 Petitioner,

11 v.

12 D. Colbert,

13 Respondent.
14

No. CV-22-00219-TUC-CKJ

ORDER

15 This matter is dismissed for lack of subject matter jurisdiction. The statutory
16 restriction, 28 U.S.C § 2255(h), on second or successive motions to vacate a sentence based
17 solely on more favorable interpretations of statutory law does not make a motion to vacate
18 a sentence inadequate or ineffective under the savings clause, 28 U.S.C. § 2255(e), to allow
19 a petitioner to test the legality of detention by proceeding under the general habeas statute,
20 28 U.S.C. § 2241. *Jones v. Hendrix*, 143 S.Ct. 1857 (2023).

21 Petitioner relied on *Allen v. Ives*, 950 F.3d 1184 (9th Cir. 2020) and other ninth
22 circuit precedent holding that a federal prisoner may use § 2241 to challenge a sentence
23 pursuant to § 2255(e) if he claims actual innocence and has not had an unobstructed
24 procedural shot at presenting the claim because the circuit law governing his appeal and
25 first § 2255 motion manifested an erroneous interpretation of statutory law that has since
26 been corrected by the Supreme Court.

27 The *Jones* opinion abrogates the circuit precedent relied on by Petitioner to
28 establish his ability to seek relief pursuant to § 2241. “Although Mr. Daranda preserves

1 his disagreement with the *Jones* holding, he acknowledges that in light of that holding,
2 the legal basis for his effort to seek relief pursuant to § 2241 is no longer valid.” (P Resp.
3 to Suppl. Citation of Authority (Doc. 38) at 2 (citing *see Horton v. Lovett*, 72 F.4th 825,
4 827 (7th Cir. 2023) (finding *Jones* abrogated seventh circuit precedent regarding §
5 2255(e); *Jones*, 143 S. Ct. at 1867-68 (noting that ninth circuit followed seventh circuit
6 precedent regarding 2255(e)).

7 On December 19, 2022, Magistrate Judge D. Thomas Ferraro issued a Report and
8 Recommendation (R&R) (Doc.26), without the benefit of *Jones* recommending the Court
9 grant the Petition and transfer the case to the United States District Court, Western
10 District of Louisiana for resentencing. The duties of the district court in connection with a
11 R&R by a Magistrate Judge are set forth in Rule 72 of the Federal Rules of Civil
12 Procedure and 28 U.S.C. § 636(b)(1). The district court makes a *de novo* determination as
13 to those portions of the R&R to which there are objections, 28 U.S.C. § 636(b)(1)(C), and
14 may “accept, reject, or modify, in whole or in part, the findings or recommendations
15 made by the magistrate judge,” 28 U.S.C. § 636(b)(1). Fed.R.Civ.P. 72(b). In light of
16 *Jones*, the Court rejects the R&R, and denies the Petition for lack of subject matter
17 jurisdiction.

18 **Accordingly,**

19 **IT IS ORDERED** that the Report and Recommendation (Doc. 26) is REJECTED.

20 **IT IS FURTHER ORDERED** that the Petition under 28 U.S.C. § 2241 (Doc. 1)
21 is DENIED.

22 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter Judgment and
23 close this case.

24 **IT IS FURTHER ORDERED** that in the event Petitioner files an appeal, the Court
25 declines to issue a certificate of appealability, pursuant to Rule 11(a) of the Rules

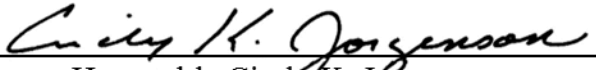
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1 Governing Section 2254 cases because reasonable jurists would not find the Court's
2 procedural ruling debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

3 Dated this 12th day of September, 2023.

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6 Honorable Cindy K. Jorgenson
7 United States District Judge
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